Re Ramanathan s/o AR A Nachiappan (Administrator De Bonis Non with the will annexed, of the Estate of K AL RM Karuppan Chettiar, deceased)

HIGH COURT (MELAKA) — ORIGINATING SUMMONS NO 24-304 OF 1997
AUGUSTINE PAUL JC
5 DECEMBER 1997

Succession *— Administration — Grant of administration de bonis non — Whether before a grant of administration de bonis non with the will annexed can be made, it must first be established that there is no chain of executorship — Probate and Administration Act 1959 ss 12, 16 & 19 — Rules of the High Court 1980 O 71 rr 26 & 36*

Karuppan Chettiar ('the testator') died in India in 1954 after having made his last will and testament whereby his adopted son Ramasamy Chettiar ('Ramasamy') was named as the sole executor. The testator had during his lifetime, properties moveable and immovable, situated in Malaysia, inclusive of the property in question. The testator in his will had directed that his residuary assets be distributed amongst his son Ramasamy and his grandsons in equal shares. Probate of the will of the testator was granted by the High Court of Penang in 1956. Ramasamy died in India in 1976, and named his wife Sivagami Achi ('the vendor') as his sole executrix. In the will, the vendor was also appointed to act as the executrix of the estate of the testator, part of which was still left unadministered as the time of Ramasamy's death.

In 1978, the grant of letters of administration de bonis non with the will annexed of the estate of the testator was granted by the High Court to Ramanathan Chettiar ('the first attorney'). In 1986, Ramanathan died prior to the complete administration of the estate of the testator. In 1995, the grant of letters of administration de bonis non with the will annexed of the estate of the testator was granted by the High Court to Subramaniam s/o Arunachalam ('the second attorney') as the vendor's second duly constituted attorney. Subramaniam died in the same year without completing the administration of the estate of the testator. Meanwhile, the vendor as executrix of the estate of Ramasamy had agreed to transfer the titles in respect of properties partitioned as instructed by Ramasamy in his will to the entitled beneficial owners. Amongst others, a piece of property known as No 47, Muntri Street, Penang ('the property') was to be transferred to RM Ramasamy ('the beneficial owner'). Whilst the transfer of the property was still pending, the beneficial owner wanted to dispose of the property. By an agreement in 1996, between the vendor, the beneficial owner and one Venkatachalam ('the purchaser'), the property was sold to the purchaser. The vendor by a power of attorney dated 4 September 1996 appointed Ramanathan s/o AR A Nachiappan ('the applicant') as her attorney to obtain letters of administration de bonis non with the will annexed

which in turn was granted by the High Court in 1997 ('the third attorney'). The applicant subsequently applied to the High Court for, inter alia, leave to sell and transfer the property to the purchaser. During the course of the proceedings, the learned judge embarked on an examination of the validity of the grant of administration given to the applicant by the vendor who was absent from Malaysia.

Held, dismissing the application:

By virtue of s 16 of the Probate and Administration Act 1959 ('the Act'), before a grant of administration de bonis non with the will annexed can be made, it must first be established that there is no chain of executorship and all executors named in the will of the deceased must have been cleared off by reciting their death or renunciation. The manner in which the chain or representation is broken must be shown in the oath.

In this case, the first, second and third attorneys were appointed by the vendor in succession as her attorneys in accordance with s 29 of the Act, as the vendor being appointed executrix was absent from Malaysia. The fact that the vendor had been named as the executrix in the will of Ramasamy meant there was no break in the chain of representation of the estate of the testator and accordingly, the grant of letters of administration de bonis non with the will annexed to the vendor's successive attorneys was wrong in law.

Therefore, as the vendor was still alive and was the executrix of the estate of the testator, the grants made to her successive attorneys ought to have been merely letters of administration with the will annexed as provided by s 29 of the Act and not by a grant de bonis non. If the grants de bonis non obtained were to be treated as valid, then there was an implication of a break in the chain of executorship with the result that the vendor was not authorized to appoint an attorney in the first place. Thus, the applicant must first have the grant amended in accordance with O 71 r 36 of the Rules of the High Court 1980 in order to clothe the applicant with the requisite authority over the estate of the testator (see pp 99C–I and 100A–D).

Obiter:

As the position of an administrator with the will annexed has been enacted in the like manner as if probate had been granted to an executor, the rights of such an administrator will therefore come within s 60(3) of the Act which does not require leave of the court in dealing with any property save for the circumstances enumerated thereunder. Accordingly, the applicant would not require leave of the court to sell the property once the grant was rectified to be one with the will annexed (see p 101F–H).

[Bahasa Malaysia summary

Karuppan Chettiar ('pewasiat') meninggal dunia di India pada tahun 1954 selepas membuat wasiat beliau di mana anak lelaki angkatnya

Ramasamy Chettiar ('Ramasamy') dinamakan sebagai wasi tunggal. Sepanjang hidupnya, pewasiat mempunyai harta alih dan tak alih yang terletak di Malaysia, termasuk harta berkenaan. Pewasiat dalam wasiatnya telah mengarahkan supaya aset bakiannya diagihkan di antara anaknya Ramasamy dan cucunya dalam bahagian yang sama. Probet wasi pewasiat diberikan oleh Mahkamah Tinggi Pulau Pinang pada tahun 1956. Ramasamy meninggal dunia di India pada tahun 1976, dan menamakan isterinya Sivagami Achi ('penjual') sebagai wasi tunggalnya. Dalam wasiatnya, penjual juga dilantik sebagai wasi harta pusaka pewasiat, sebahagian yang mana masih tidak ditadbir pada masa kematian Ramasamy.

Pada tahun 1978, geran surat kuasa mentadbir de bonis non dengan wasiat terlampir atas harta pusaka pewasiat diberikan oleh Mahkamah Tinggi kepada Ramanathan Chettiar ('wakil pertama'). Pada tahun 1986, Ramanathan meninggal dunia sebelum pentadbiran penuh harta pusaka pewasiat. Pada tahun 1995, geran surat kuasa mentadbir de bonis non dengan wasiat terlampir atas harta pusaka pewasiat diberikan oleh Mahkamah Tinggi kepada Subramaniam a/l Arunachalam ('wakil kedua') sebagai wakil kedua penjual yang dilantik. Subramaniam telah meninggal dunia pada tahun yang sama tanpa menyempurnakan pentadbiran harta pusaka pewasiat. Sementara itu, penjual sebagai wasi harta pusaka Ramasamy telah bersetuju memindah hakmilik berkenaan dengan harta yang dalam wasiatnya kepada pemunya benefisial yang berhak. Antara lain, sebidang tanah yang dikenali sebagai No 47, Muntri Street, Penang ('harta tersebut') hendaklah dipindah kepada RM Ramasamy ('pemunya benefisial'). Manakala pemindahan harta tersebut masih menunggu penyempurnaan, pemunya benefisial ingin melupuskan harta tersebut. Melalui suatu perjanjian pada tahun 1996, di antara penjual, pemunya benefisial dan seorang bernama Venkatachalam ('pembeli'), harta tersebut dijual kepada pembeli. Menerusi surat kuasa wakil bertarikh 4 September 1996 penjual telah melantik Ramanathan s/o AR A Nachiappan ('pemohon') sebagai wakilnya untuk memperolehi surat kuasa mentadbir de bonis non dengan wasiat terlampir yang pula diberikan oleh Mahkamah Tinggi pada tahun 1997 ('wakil ketiga'). Pemohon kemudiannya memohon kepada Mahkamah Tinggi untuk, antara lain, kebenaran menjual dan memindah harta tersebut kepada pembeli. Semasa prosiding berlangsung, hakim yang bijaksana memulakan pemeriksaan kesahan geran pentadbiran yang diberikan kepada pemohon oleh penjual yang tidak hadir di Malaysia.

Diputuskan, menolak permohonan:

Disebabkan s 16 Akta Probet dan Pentadbiran 1959 ('Akta tersebut'), sebelum suatu geran pentadbiran de bonis non dengan wasiat terlampir boleh dibuat, ia mestilah pertamanya ditunjukkan bahawa tiada rangkaian kewasian dan kesemua wasi yang dinamakan dalam wasiat si mati mestilah telah tiada dengan menyebut kematian atau penolakan mereka. Cara dalam mana rangkaian atau perwakilan terputus mestilah ditunjukkan dalam sumpah.

Dalam kes ini, wakil-wakil pertama, kedua dan ketiga telah dilantik oleh penjual secara berturut-turut sebagai wakilnya menurut s 29 Akta tersebut, kerana penjual yang dilantik sebagai wasi tidak hadir di Malaysia. Hakikat bahawa penjual telah dinamakan sebagai wasi dalam wasiat Ramasamy bermakna bahawa rangkaian perwakilan harta pusaka pewasiat tidak putus dan oleh itu, geran surat kuasa mentadbir de bonis non dengan wasiat terlampir kepada wakil berturut-turut penjual adalah salah di sisi undang-undang.

Maka, oleh kerana penjual masih hidup dan adalah wasi harta pusaka pewasiat, geran-geran yang dibuat kepada wakil-wakil berturut-turut sepatutnya cuma merupakan surat kuasa mentadbir dengan wasiat terlampir seperti yang diperuntukkan oleh s 29 Akta tersebut dan bukan oleh geran de bonis non. Sekiranya geran-geran de bonis non dianggap sebagai sah, maka wujud implikasi bahawa rangkaian kewasian terputus dengan keputusan bahawa penjual tidak berkuasa untuk melantik wakil pertama sekali. Justeru itu, pemohon mestilah pada mulanya meminda geran menurut A 71 k 36 Kaedah-Kaedah Mahkamah Tinggi 1980 supaya memberi kuasa yang perlu kepada pemohon ke atas harta pusaka pewasiat (lihat ms 99C–I dan 100A–D).

Obiter:

Oleh kerana kedudukan seorang pentadbir dengan wasiat terlampir telah digubal mengikut cara seolah-olah probet telah diberikan kepada seorang wasi, hak pentadbir demikian akan dirangkumi oleh s 60(3) Akta tersebut yang tidak menghendaki kebenaran mahkamah dalam menguruskan apa-apa harta kecuali keadaan-keadaan yang disebut di bawahnya. Oleh itu, pemohon tidak memerlukan kebenaran mahkamah untuk menjual harta sebaik sahaja geran dibetulkan menjadi geran dengan wasiat terlampir (lihat ms 101F–H).]

Notes

For cases on administration, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1659–1726.

Legislation referred to

Probate and Administration Act 1959 ss 2, 12, 16, 16(d), 17, 29, 60(3), (4)

Rules of the High Court 1980 O 71 rr 26, 36

Sekar a/l Palaniandy (*Sault & Co*) for the applicant.

Augustine Paul JC: This matter which commenced as an application for leave to sell immovable property by an administrator ended in a consideration of the validity of a grant of administration given to a duly authorized attorney of an absent executor.

By an agreement in writing dated 23 September 1996 between RM Sivagami Achi d/o Ramanathan Chettiar also known as Sivakami

Achi, widow of the late K AL RM KR Ramasamy Chettiar of No 8 KAL RM Street, Karaikudi, PM District, Tamil Nadu, South India ('the vendor') and RM Ramasamy also known as Ramaswami @ Sethu @ Ramasami s/o K AL RM KR Ramasamy Chettiar of the said Karaikudi, PM District, Tamil Nadu, South India ('the beneficial owner') and Arunachalam s/o RM KP Venkatachalam of No 64, Lorong Hang Jebat, 75200 Melaka, Malaysia ('the purchaser') ('the agreement'), the vendor and the beneficial owner agreed to sell to the purchaser the piece of land and premises known as No 47, Muntri Street, Penang ('the property') in consideration for a sum of RM125,000.

By his application dated 16 September 1997, one Ramanathan s/o AR A Nachiappan ('the applicant'), in his capacity as administrator de bonis non with the will annexed for the use and benefit of the vendor, prayed for an order, inter alia, that:

(a) leave be granted to sell and transfer the property to the purchaser;

(b) the receipt of the purchase price by him be a valid, good and sufficient discharge in respect of the sale;

(c) the Registrar of Titles, Pulau Pinang or any other land registering authority do cause the relevant entries and/or memorials to be made in the register of titles and/or issue document of titles and/or instruments or relevant records and do all other things necessary which ought to be done to give effect to the order to be made; and

(d) he be given liberty to pay and settle all charges and expenses arising pursuant to the sale of the property.

It is necessary to set out an outline of the facts that led to the grant of administration in favour of the applicant in order to consider its validity for reasons which will become apparent as the judgment progresses. One K AL RM Karuppan Chettiar @ Kana Ana Lana Ravanna Mana Karuppan Chettiar @ KTK Karuppan Chettiar s/o Ramasamy Chettiar ('the testator') died in India on 22 December 1954 after having made and duly executed his last will and testament dated 4 October 1954 whereby he appointed his adopted son K AL RM KR Ramasamy Chettiar @ Kana Ana Lana Ravanna Mana Kana Runa Ramasamy Chettiar @ Ramasamy Chettiar s/o Karuppan Chettiar ('Ramasamy Chettiar') the sole executor thereof. The testator had, during his lifetime, properties movable and immovable, situate in Malaysia which included the property. By his will the testator had directed, inter alia, that his residuary estate (which included the property) be distributed amongst his sons, Ramasamy Chettiar and his grandsons (ie the sons of Ramasamy Chettiar) in equal shares. Probate of the will of the testator was granted by the High Court, Penang ('the court') to Ramasamy Chettiar in Petition No 148 of 1955 and the grant of probate was issued by the court on 30 October 1956. Ramasamy Chettiar died in India on 12 January 1976, after having made and duly executed his last will and testament on 16 October 1970 with the vendor as the sole executrix. By his will he directed, inter alia, that:

A My executor shall also act as the Executor of the Estate of K AL RM Karuppan Chettiar in my place after my death and she shall perform all the duties cast upon me by my late father Karuppan Chettiar in his Will.

He left behind:

B (1) his lawful widow, the vendor; and
(2) his lawful sons:
(i) RM Karuppan Chetty @ Sathi;
(ii) RM Alagappan;
(iii) the beneficial owner; and
C (iv) RM Subramaniam.

By his will, he declared that:

(i) there had been a partition between himself and his father during his father's lifetime and he was managing the estate of his father, the
D testator, as executor as aforementioned; and
(ii) his share of the properties belonged to the Hindu Undivided Family consisting of himself and his sons:
(a) RM Karuppan Chetty @ Sathi;
(b) RM Alagappan;
E (c) the beneficial owner; and
(d) RM Subramaniam.

He further bequeathed his undivided 1/5 share in the Joint Family properties and his individual properties to the vendor.

F By a memorandum of partition executed in India on 20 April 1992 between:

(i) the vendor;
(ii) RM Karuppan Chetty @ Sathi;
(iii) RM Alagappan;
G (iv) the beneficial owner; and
(v) RM Subramaniam,

certain immovable properties in Malaysia were distributed and/or allotted by way of partition to them as the beneficiaries and co-parceners as
H mentioned in the will of Ramasamy Chettiar, and pursuant to the partition the property was allotted to the beneficial owner.

When Ramasamy Chettiar died, part of the estate of the testator was left unadministered. On 10 January 1978, letters of administration with the will annexed of all the estate and effects of the testator was granted by
I the court to Ramanathan Chettiar ('Ramanathan') of No 3, Pekan Cina, Alor Setar, Kedah, Malaysia as the vendor's duly constituted attorney acting under a power of attorney dated 22 July 1976 and registered in the court as PA No 371/76 for her use and benefit and until she herself should

apply for such letters of administration de bonis non with will annexed to be granted to her. On 5 June 1978, the grant of letters of administration de bonis non with the will annexed to the estate of the testator was issued by the court to Ramanathan. On 17 July 1986, Ramanathan died in India without having wholly administered the estate of the testator and the grant of letters of administration de bonis non with the will annexed to the estate of the testator issued to him as the vendor's attorney as aforesaid ceased upon his death. On 22 September 1994, letters of administration with the will annexed of all the estate and effects of the testator was granted by the court in Petition No 31–10 of 1994 to one Subramanian s/o Arunachalam ('Subramanian') of No 3 Pekan Cina, Alor Setar, Kedah as the vendor's duly constituted attorney for her use and benefit and until she herself should apply for such letters of administration de bonis non with the will annexed to be granted to her. On 19 October 1994, the grant of letters of administration de bonis non with the will annexed to the estate of the testator was issued by the court to Subramanian. On 26 December 1995, Subramanian died at Alor Setar, Kedah without having wholly administered the estate of the testator and the grant of letters of administration de bonis non with the will annexed to the estate of the testator issued to him as the vendor's attorney ceased upon his death.

The vendor, as the executrix of the will of Ramasamy Chettiar, agreed to execute and sign all transfer deeds and other writings required for the transfer of the titles in respect of the properties partitioned as described earlier in the respective names of the parties to the memorandum of partition. The property did at all material times and still does stand registered in the name of Ramasamy Chettiar as the personal representative of the testator. Whilst the transfer of the property to the beneficial owner pursuant to the said partition remained pending, the beneficial owner decided to cause the property allotted to him to be disposed of by the personal representative of the estate of the testator in accordance with the laws of Malaysia. The vendor was desirous of applying for a cessate grant of letters of administration with the will annexed being a re-grant of the whole of the testator's estate. However, being unable to proceed to Malaysia, the vendor — by a power of attorney executed by her on 4 September 1996 — appointed the applicant of No 134 Penang Street, Penang, Malaysia as her attorney to act on her behalf for the purpose of applying for and obtaining a grant of letters of administration de bonis non with the will annexed. On 26 August 1997, letters of administration de bonis non with the will annexed of the estate of the testator was granted to the applicant by the court.

Before I could make any order on the prayers sought, I felt it was necessary to consider the validity of the grant held by the applicant. I gave due notice of this to learned counsel. It is settled law that a grant of probate does not necessarily cease permanently with the death of the grantee. An executor having taken probate of a will becomes ipso facto executor not only of that will but also of the will of any testator of whom the other was sole, or sole surviving, proving executor and so on, ad infinitum, upwards. This process is referred to as the chain or transmission of executorship and is governed by s 12 of the Probate and Administration Act 1959 ('the Act'). The section reads as follows:

A (1) An executor of a sole or last surviving executor of a testator is the executor of that testator:

Provided that this provision shall not apply to an executor who does not prove the will of his testator, and, in the case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the will of that testator, it shall cease to apply on
B probate being granted.

(2) So long as the chain of representation is unbroken, the last executor in the chain is the executor of every preceding executor.

(3) The chain of representation is broken by —
(a) an intestacy;
C (b) the failure of a testator to appoint an executor; or
(c) the failure to obtain probate of a will,

but is not broken by a temporary grant of administration if probate is subsequently granted.

(4) Every person in the chain of representation to a testator —
(a) has the same rights in respect of the estate of that testator as the
D original executor would have had if living; and
(b) is, to the extent to which the estate of that testator has come to his hands, answerable as if he were an original executor.

The chain of representation is not broken even when a person who would be entitled to representation is absent from Malaysia. In such cases,
E administration may be granted to his lawfully constituted attorney for his use and benefit. This is provided by s 29 of the Act which reads as follows:

Where a person who would be entitled to representation is absent from Malaysia, the following provisions shall apply:

(a) where an executor appointed by a will is absent from Malaysia, and
F there is no other executor within Malaysia willing to act, letters of administration with the will annexed may be granted to a duly authorized attorney of the absent executor, limited until he obtains probate for himself, and in the meantime to any purpose to which the attorney's authority is limited;

G (b) where any person to whom letters of administration with the will annexed might be granted under section 16 is absent from Malaysia, letters of administration with the will annexed may be granted to his duly authorized attorney, limited as described in paragraph (a);

(c) where a person entitled to letters of administration in case of intestacy is absent from Malaysia, and no person equally entitled is willing to act,
H letters of administration may be granted to an authorized attorney of the absent person, limited until he shall obtain a grant himself; and

(d) the Court shall have regard to section 7 of the Diplomatic and Consular Privileges Ordinance 1957.

Section 29 of the Act must be read with O 71 r 26 of the Rules of the High
I Court 1980 ('the RHC') which reads as follows:

Where a person entitled to a grant resides outside Malaysia, administration may be granted to his lawfully constituted attorney for his use and benefit, limited until such person shall obtain a grant or in such other way as the Registrar may direct:

Provided that the attorney must file a certified true copy of the power of attorney with the petition or prove that he has deposited it or a certified copy of it in the Registry of the High Court in the manner provided by section 4 of the Powers of Attorney Ordinance 1949;

And provided that where the person so entitled is an executor, administration shall not be granted to his attorney without notice to the other executors, if any, unless such notice is dispensed with by the Registrar.

Thus a grant made to the attorney of an executor is of administration (with will) for the use and benefit of the executor and is limited until such time as he shall apply for and obtain probate. The grant makes the attorney agent for the donor but it is virtually for the use and benefit of all those interested in the estate. On the death of the attorney before completing administration, a further grant made to another attorney is commonly called a cessate grant. Such grants are made in two sets of circumstances:

(a) where the original grant was limited in time or until the happening of some event, and that time has flowed or that event has happened;

(b) where the original grant was made for the use and benefit of another and the grantee has died.

Where, however, the person for whose use and benefit the grant was made has died, the grant is de bonis non and not cessate (see Williams & Mortimer *Executors, Administrators and Probate* (15th Ed) pp 280 and 302).

The chain of representation is broken where a will is proved by any person other than an executor. In such cases too a grant of administration with the will annexed is made. This is governed by s 16 of the Act which reads as follows:

Where —

(a) no executor is appointed by a will;

(b) the executor or all the executors appointed by will are legally incapable of acting as such, or have renounced;

(c) no executor survives the testator;

(d) all the executors die before obtaining probate or before having administered all the estate of the deceased; or

(e) the executors appointed by any will do not appear and extract probate,

letters of administration with the will annexed may be granted to such person or persons as the Court deems fittest to administer the estate:

Provided that a prior right to the grant shall belong to the following persons in the following order:

(i) a universal or residuary legatee;

(ii) a personal representative of a deceased universal or residuary legatee;

(iii) such person or persons, being beneficiaries under the will, as would have been entitled to a grant of letters of administration if the deceased had died intestate;

(iv) a legatee having a beneficial interest; and

(v) a creditor of the deceased.

The grant of letters of administration with the will annexed where an executor dies before having administered all the estate of the deceased as described in s 16(d) of the Act is generally known by the first three words of the full Latin title *de bonis non administratis.* As stated in *Tristram and Coote's Probate Practice* (28th Ed) at p 432, such a grant is required if:

> .... the person to whom a grant of representation has been made has died leaving part of the estate of the deceased unadministered then, *unless there is a chain of executorship* ..., a grant in respect of the unadministered estate may be made to a new personal representative to enable the administration to be completed. (Emphasis added.)

Thus, before a grant of administration (with will) de bonis non can be made, it must be established that there is no chain of executorship and all executors named in the will of the deceased must have been cleared off (including any to whom power was reserved), ie by reciting their death or renunciation. The manner in which the chain of representation is broken must be shown in the oath (eg by stating that the sole executor or the survivor of the proving executors died intestate, or having made a will but not appointing any executor, as the case may be) (see *Tristram and Coote's Probate Practice* (28th Ed) pp 433–434). It is pertinent to observe that a grant de bonis non carries with it full powers of administration of the unadministered estate as opposed to a grant given to an attorney whose powers are limited as described in s 29 of the Act.

The facts of this case reveal that probate of the testator's estate was granted to Ramasamy Chettiar whose sole executrix is the vendor. Pursuant to a power of attorney given by the vendor, letters of administration de bonis non with the will annexed was granted to Ramanathan. When he died in 1986, a similar grant was made in favour of Subramanian in 1994 and upon the latter's death, to the applicant on 26 August 1997. It will be observed that the three persons just referred to were appointed by the vendor in succession as her attorneys in accordance with s 29 of the Act as she, being appointed as executor, is absent from Malaysia. The fact that she has been named as executor in the will of Ramasamy Chettiar means that there is no break in the chain of representation of the estate of the testator. Accordingly, the grant of letters of administration 'de bonis non' with the will annexed to her attorneys is wrong in law as such an appointment can only be made where there is a break in the chain of executorship which is not the position in this case. In this regard, *Tristram and Coote's Probate Practice* (28th Ed) says at p 432:

> No grant de bonis non can issue while there is already a personal representative of the deceased by chain of executorship.

And at p 440:

> If the donor of a power of attorney, for whose use and benefit administration has been granted, should die in the lifetime of the attorney administrator, the subsequent grant will be grant of administration de bonis non and not a cessate grant.

As the vendor is still alive and is the executor of the estate of the testator, the grants made to her attorneys ought to have been merely letters of

administration with the will annexed as provided by s 29 of the Act and not a grant de bonis non. If the grants de bonis non granted by the vendor to her attorneys are to be treated as valid, then there is an implication of a break in the chain of executorship of the estate of the testator with the result that the vendor is not authorized to appoint an attorney. In such circumstances, the administrator appointed must be in accordance with the order of priority as laid down in s 16 of the Act. The appointment of the applicant would therefore be null and void in either event. In the premises, it is my view that the applicant must first have the grant that he holds amended in order to clothe him with authority over the estate of the testator in accordance with O 71 r 36 of the RHC which reads as follows:

> (1) If the Registrar is satisfied that a grant should be amended or revoked he may make an order accordingly:
>
> Provided that except in special circumstances no grant shall be amended or revoked under this rule except on the application or with the consent of the person to whom the grant was made.
>
> (2) The Registrar must notify the Registrar of the Principal Registry of any amendment or revocation of a grant under paragraph (1).

Learned counsel in applying for leave to sell the property relied on s 60(4) of the Act. It is necessary to reproduce the whole of s 60 in order to determine the correctness of learned counsel's submission. The section reads as follows:

> (1) In dealing with the property of the deceased his personal representative shall comply with this section.
>
> (2) Unless the Court otherwise directs, no sale, transfer, conveyance or assent in respect of immovable property shall be made without the concurrence of all the personal representatives of the deceased; and subject as aforesaid, where there are several personal representatives the powers of all may, in the absence of any direction to the contrary in the will or grant of administration, be exercised by any one of them.
>
> (3) A personal representative may charge, mortgage or otherwise dispose of all or any property vested in him, as he may think proper, subject to any restriction which may be imposed in this behalf by the will of the deceased, and subject to this section:
>
> Provided that an executor may dispose of any property notwithstanding any restriction so imposed, if he does so in accordance with an order of the Court.
>
> (4) An administrator may not, without the previous permission of the Court —
>
> (a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immovable property situate in any State and for the time being vested in him; or
>
> (b) lease any such property for a term exceeding five years.
>
> (5) Nothing in this section shall affect section 15(2) of the Trustee Act 1949.
>
> (6) The disposal of property by a personal representative in contravention of this section shall be voidable at the instance of any other person interested in the property.

Section 60(3) which does not require leave of court except in the instance enumerated therein is confined in its operation to executors while s 60(4) which requires such leave applies to administrators. What requires deliberation is the applicable law in the case of administration with the will annexed. Though it is a grant of administration, the estate must be administered in accordance with the terms of the will. In my opinion, learned counsel was perhaps misled by the definition of the word 'administrator' in s 60(4) of the Act when he applied for leave. Section 2 of the Act defines 'administration' as:

> ... means, with reference to the estate of a deceased person, letters of administration issued by the Court whether general or limited *or with the will annexed* or otherwise authorizing the person or persons therein named to administer the deceased person's estate in accordance with law; ... . (Emphasis added.)

and 'administrator' as:

> ... means a person to whom administration is granted; ... .

The inclusion of a grant of letters of administration with the will annexed in the definition of 'administration' led learned counsel to believe that his case thereby came within the ambit of s 60(4) of the Act which requires permission of the court in dealing with immovable property as described in the subsection. However, the proper status of administration with the will annexed is dealt with in s 17 of the Act which provides that:

> ... ; and in any case where administration with the will annexed is granted the will of a deceased shall be performed and observed in a like manner as if probate thereof had been granted to an executor.

As the position of administration with the will annexed has been enacted to be in a like manner as if probate had been granted to an executor, the rights of such an administrator will therefore come within s 60(3) of the Act which does not require leave of court in dealing with any property except in the instance enumerated in the subsection. The definition of the word 'administration' in s 2 of the Act to include an administration with the will annexed, thereby bringing such grants within the ambit of s 60(4) of the Act, must therefore be interpreted in that light. This is borne out by the fact that the definition section has been expressly enacted to be '... unless the context otherwise requires ...' and the effect of s 17 of the Act is to provide such contrary intention. It follows that the scope of s 60(4) of the Act has, in consequence, been modified as authorized. Accordingly, the applicant does not need leave of court to sell the property once he has had the grant rectified to be one with the will annexed. This is of course subject to the condition that the disposal is in accordance with the terms of the will of the testator.

In the light of the ruling that I have made, it is unnecessary for me to consider the other prayers sought. The application is therefore dismissed.

Application dismissed.

Reported by Lew Chee Seong